IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 907 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAIRMAN & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Applicant(s) : 1 - 3.
PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR MIG MANSURI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/10/2007

ORAL JUDGMENT

1. The petitioners are the Chairman, Managing Director and Manager of one Sarvoday Commercial

Cooperative Bank Limited (“the bank” for short). They are the original accused nos. 5,6 and 7 in a criminal complaint dated 21.11.2006 filed by respondent no.2 herein before the Court of Metropolitan Magistrate, Court No.22, Ahmedabad.

2. Certain facts which are not in dispute are as follows :

2.1 The original accused nos. 1 and 2 had obtained loan of Rs. 3,50,000/- and Rs. 1,70,000/- respectively from the bank. To secure the loans, the accused nos. 1 and 2 had produced certain property documents of Shop Nos. F-1 and F-2 of Garviv Annexe situated in land bearing Final Plot No.106/2/B/2 of TP Scheme No.4 of Ahmedabad. Before the bank, the accused nos. 1 and 2 produced several documents including their membership of Non Trading Association of the Owners Association, Certificate of Office Bearers etc.

2.2 Since the borrower did not make repayment of loan, bank started Lavad Suit No. 1173 and 1199, both of 2004 before the Registrar, Board of Nominees, Ahmedabad. Suits came to be decreed on 23.8.2004 and 28.9.2004. Since the borrower or their guarantor did not satisfy the decree, the bank proceeded further and attachment order of the Shops in question came to be passed on 29.12.2004.

2.3 On 20.1.2005, the complainant filed Civil Suit No.135/2005 before the City Civil Court, Ahmedabad for a declaration that the borrowers are not the owners of the property namely Shops Nos. F-1 and F-2 and prayed for interim injunction. No stay however, was granted and it appears that the complainant approached the Gujarat State Cooperative Tribunal by filing Appeal No.148/2005 against the judgement and decree passed by the Registrar, Board of Nominees. On condition that the complainant deposits 75% of the decreetal amount, stay was granted against the execution of the decree.

2.4 In the meantime, one Devendrakumar Maneklal Bhatt also filed Civil Suits Nos.1763/2006 and 1764/2006 with a case that there is an agreement of lease executed between him and the complainant and the properties were mortgaged with him and that therefore, he should not be evicted.

2.5 Respondent no.2 herein filed a criminal complaint on 26.11.2006 in the Court of Metropolitan Magistrate Court No.22, Ahmedabad. In the complaint, it is stated inter-alia that the complainant is the owner of the Shops in question and accused nos. 1 and 2 had no right to offer the same as Security for securing loan from the Bank. Insofar as the present petitioners are concerned, however, all that is

stated by the complainant is that though forged documents were produced by the accused nos. 1 and 2, the petitioners without any detailed inquiry and without verifying the actual position on the spot, granted the loan. Despite this, the petitioners are insisting that the complainant must repay the loan, failing which, the Shops will be sold.

2.6 On the said complaint, learned Magistrate called for police investigation under Section 202 of the Criminal Procedure Code and asked for a report within 60 days. It is not in dispute that a report is also been filed by the police.

3. It is on the basis of these undisputed factual parameters that the case of the petitioner is required to be considered.

4. Having heard learned advocate Shri P.K. Jani for the petitioners and learned APP Shri Mengdey for the respondent State and learned advocate Shri Mansuri for respondent no.2 original complainant, I find that neither the complaint nor the material collected by the police during the investigation carried out under the order of Magistrate under Section 202 of the Criminal Procedure Code, there is any material to proceed against the petitioners. As noted earlier, the accused nos. 1 and 2 had obtained loan from the

bank. To secure the loan they had offered the above-mentioned properties as Security. It is the case of the complainant that documents presented at the time of securing the loan were forged by the accused nos. 1 and 2. Nowhere in the complaint, complainant has stated that the Bank and its officers connived with the original accused nos. 1 and 2 to release the loan with the aid of forged documents of Security. Even going a step further and perusing the reports submitted by the police, I do not find that there is any material of connivance of the petitioner with the accused no.1 and 2 in committing the alleged crime. Even the police in its report has clearly stated that the Security documents were accepted by the Bank without proper verification or detailed inquiry. It may be that the petitioners were guilty of negligence in discharge of duties. It may even be that by their acts of negligence, they expose the bank to undue risk of release of unsecured loans. However, same cannot take form of any criminal offence. Nowhere it is stated in the complaint or in the report of the police that knowing fully well the documents are forged, the petitioner accepted the same to ensure illegal release of loan in favour of original accused nos. 1 and 2.

5. In that view of the matter, I do not find any hesitation in coming to the conclusion that

criminal complaint is required to be quashed qua the petitioners herein. Nothing stated in this order shall effect the complainant insofar as same pertains to rest of the accused persons.

6. In the result, petition is allowed qua the present petitioners alone. Complaint dated 21.11.2006 is quashed qua the present petitioners only. Rule made absolute.

7. Learned advocate Shri P.K. Jani for the petitioner submitted that the complainant has rather vaguely made allegations against accused no.8 as all the Directors of the Bank. Be that as it may, I have confined my relief to the petitioners herein since other Directors are not called upon to answer any of the allegations nor are before this Court. I do not pass any order qua them.

(Akil Kureshi,J.)

(raghu)